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5 Attorneys for Defendant
6 BANK OF AMERICA GROUP BENEFITS PROGRAM
(identified by Plaintiff as "Bank of America Self-Insured Medical Plans,"
7 "Associate Life Insurance - Basic" and "Associate Life
Insurance - Supplemental Plan")
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10 UNITED STATES DISTRICT COURT FOR
11 THE NORTHERN DISTRICT OF CALIFORNIA

12 JAMES MICHAEL BROWN,

13 Plaintiff,

14 v.

15 BANK OF AMERICA SELF-INSURED MEDICAL
16 PLANS; ASSOCIATE LIFE INSURANCE-BASIC
17 AND ASSOCIATE LIFE INSURANCE-
SUPPLEMENTAL PLAN,

18 Defendants.
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FILED

NOV 15 2007

RICHARD W. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. CGC-07-4844 EDL
UNLIMITED JURISDICTION

DEFENDANT'S ANSWER TO
PLAINTIFF'S COMPLAINT FOR
DECLARATORY RELIEF

1 Defendant Bank of America Group Benefits Program ("Defendant"), identified by
2 Plaintiff as "Bank of America Self-Insured Medical Plans," "Associate Life Insurance-Basic
3 Plan" and "Associate Life Insurance-Supplemental Plan," responds to the Complaint for
4 Declaratory Relief filed by Plaintiff James Michael Brown ("Plaintiff") as follows:

5 **JURISDICTION**

6 1. The allegations are legal conclusions containing no factual allegations and,
7 thus, Defendant is not required to admit or deny the allegations in paragraph 1 of Plaintiff's
8 Complaint.

9 **VENUE/INTRADISTRICT ASSIGNMENT**

10 2. The allegations are legal conclusions containing no factual allegations and,
11 thus, Defendant is not required to admit or deny the allegations in paragraph 2 of Plaintiff's
12 Complaint.

13 **PARTIES**

14 3. Defendant alleges and avers that Plaintiff was a participant in the Bank of
15 America Group Benefits Program through which he elected medical coverage under, and
16 was a participant in, the Blue Cross Blue Shield Plan. Defendant alleges and avers that
17 Plaintiff was a participant in the Associate Life Insurance-Basic and Associate Life
18 Insurance Supplemental Plan, a Metropolitan Life Insurance Company ("MetLife") Plan
19 through which he was provided an life insurance policy by MetLife. Defendant alleges and
20 avers that Plaintiff was an employee of Bank of America, National Association ("the
21 Bank") and, by virtue of his employment with the Bank, was eligible to participate in
22 benefit programs sponsored by Bank of America Corporation including, the Blue Cross
23 Blue Shield and MetLife plans. Defendant expressly denies that the Bank of America Self-
24 Insured Health Plan is insured by Blue Shield. Except as so expressly admitted, Defendant
25 denies each and every allegation contained in paragraph 3 of Plaintiff's Complaint.
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1 4. The allegations are legal conclusions containing no factual allegations and,
2 thus, Defendant is not required to admit or deny the allegations in paragraph 4 of Plaintiff's
3 Complaint.

4 **FIRST CLAIM FOR RELIEF**
5 **(For Declaratory Relief that Plaintiff is Entitled**
6 **to Benefits-Against Defendant Health Insurance Plan, only)**

7 5. Defendant admits that Plaintiff received medical benefits under the terms of
8 the Blue Cross Blue Shield Plan. Except as so expressly admitted, Defendant denies the
9 allegations in paragraph 5 of Plaintiff's Complaint.

10 6. Defendant denies each and every allegation in paragraph 6 of Plaintiff's
11 Complaint.

12 7. Defendant denies each and every allegation contained in paragraph 7 of
13 Plaintiff's Complaint.

14 8. Defendant denies each and every allegation contained in paragraph 8 of
15 Plaintiff's Complaint.

16 9. Defendant admits that letters dated January 16, 2007, April 12, 2007 and May
17 14, 2007 are attached to Plaintiff's Complaint as Exhibit A. Except as so expressly
18 admitted, Defendant denies each and every allegation contained in paragraph 9 of Plaintiff's
19 Complaint.

20 10. Defendant admits that a letter from MetLife dated May 15, 2007 is attached to
21 Plaintiff's Complaint as Exhibit B. Except as so expressly admitted, Defendant denies each
22 and every allegation contained in paragraph 10 of Plaintiff's Complaint.

23 11. The allegation is vague and ambiguous and, on that basis, Defendant denies
24 the allegation contained in paragraph 11 of Plaintiff's Complaint.

25 12. Defendant denies each and every allegation contained in paragraph 12 of
26 Plaintiff's Complaint.

27 13. Defendant denies each and every allegation contained in paragraph 13 of
28 Plaintiff's Complaint.

1 14. Defendant denies each and every allegation contained in paragraph 14 of
2 Plaintiff's Complaint.

3 15. The allegations are legal conclusions containing no factual allegations and,
4 thus, Defendant is not required to admit or deny the allegations in paragraph 15 of
5 Plaintiff's Complaint.

6 16. The allegations are legal conclusions containing no factual allegations and,
7 thus, Defendant is not required to admit or deny the allegations in paragraph 16 of
8 Plaintiff's Complaint.

9 17. The allegations are legal conclusions containing no factual allegations and,
10 thus, Defendant is not required to admit or deny the allegations in paragraph 17 of
11 Plaintiff's Complaint.

12 18. The allegations are legal conclusions containing no factual allegations and,
13 thus, Defendant is not required to admit or deny the allegations in paragraph 17 of
14 Plaintiff's Complaint.

15 19. The allegations are legal conclusions containing no factual allegations and,
16 thus, Defendant is not required to admit or deny the allegations in paragraph 19 of
17 Plaintiff's Complaint.

18 20. The allegations are legal conclusions containing no factual allegations and,
19 thus, Defendant is not required to admit or deny the allegations in paragraph 20 of
20 Plaintiff's Complaint.

21 21. Defendant denies each and every allegation contained in paragraph 21 of
22 Plaintiff's Complaint.

23 22. Defendant denies each and every allegation contained in paragraph 22 of
24 Plaintiff's Complaint.

25 23. The allegations are legal conclusions containing no factual allegations and,
26 thus, Defendant is not required to admit or deny the allegations in paragraph 23 of
27 Plaintiff's Complaint
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1 24. The allegations are legal conclusions containing no factual allegations and,
2 thus, Defendant is not required to admit or deny the allegations in paragraph 24 of
3 Plaintiff's Complaint.

4 25. The allegations are legal conclusions containing no factual allegations and,
5 thus, Defendant is not required to admit or deny the allegations in paragraph 25 of
6 Plaintiff's Complaint.

7 26. The allegations are legal conclusions containing no factual allegations and,
8 thus, Defendant is not required to admit or deny the allegations in paragraph 26 of
9 Plaintiff's Complaint.

10 27. Defendant denies each and every allegation contained in paragraph 27 of
11 Plaintiff's Complaint, and further denies that Plaintiff is entitled to recover attorneys' fees
12 and costs.

13 **SECOND CLAIM FOR RELIEF**

14 **(For Declaratory Relief That Plaintiff is Entitled to Benefits-**
15 **Against Defendant Life Insurance Plan, Only)**

16 28. Defendant incorporates by reference its allegations, admissions and denials as
17 set forth in paragraphs 1 through 27, inclusive.

18 29. Defendant admits that Plaintiff was entitled to life insurance coverage under a
19 group term policy issued by MetLife. Except as so expressly admitted, Defendant denies
20 each and every allegation contained in paragraph 29 of Plaintiff's Complaint.

21 30. Defendant denies each and every allegation contained in paragraph 30 of
22 Plaintiff's Complaint.

23 31. Defendant denies each and every allegation contained in paragraph 31 of
24 Plaintiff's Complaint.

25 32. Defendant denies each and every allegation contained in paragraph 32 of
26 Plaintiff's Complaint.

27 33. Defendant denies each and every allegation contained in paragraph 33 of
28 Plaintiff's Complaint.

1 34. Defendant denies each and every allegation contained in paragraph 34 of
2 Plaintiff's Complaint.

3 35. Defendant denies each and every allegation contained in paragraph 35 of
4 Plaintiff's Complaint.

5 36. The allegations are legal conclusions containing no factual allegations and,
6 thus, Defendant is not required to admit or deny the allegations in paragraph 36 of
7 Plaintiff's Complaint.

8 37. The allegations are legal conclusions containing no factual allegations and,
9 thus, Defendant is not required to admit or deny the allegations in paragraph 37 of
10 Plaintiff's Complaint.

11 38. The allegations are legal conclusions containing no factual allegations and,
12 thus, Defendant is not required to admit or deny the allegations in paragraph 38 of
13 Plaintiff's Complaint.

14 **AFFIRMATIVE DEFENSES**

15 Defendant asserts the following affirmative defenses to Plaintiff's Complaint:

16 **FIRST AFFIRMATIVE DEFENSE**

17 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
18 Defendant alleges:

- 19 1. Plaintiff lacks capacity or standing to bring this action against Defendant.

20 **SECOND AFFIRMATIVE DEFENSE**

21 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
22 Defendant alleges:

- 23 2. Plaintiff failed to state facts sufficient to constitute a cause of action.

24 **THIRD AFFIRMATIVE DEFENSE**

25 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
26 Defendant alleges:

- 27 3. Plaintiff failed to take reasonable steps to avoid harm.

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3 **FOURTH AFFIRMATIVE DEFENSE**

4 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
5 Defendant alleges:

6 4. Plaintiff's claims for deprivation of benefits are barred by the failure of
7 Plaintiff, in whole or in part, to exhaust internal review procedures mandated by the
8 Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. Sections 1001, *et seq.*

9 **FIFTH AFFIRMATIVE DEFENSE**

10 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
11 Defendant alleges:

12 5. Plaintiff's claims for deprivation of benefits are preempted by ERISA and the
13 claims for damages, if any, that are recoverable are limited by ERISA. 29 U.S.C. §§
14 502(a)(2)(B) and 514, 29 U.S.C. §§ 1132(a)(1)(B) and 1144.

15 **SIXTH AFFIRMATIVE DEFENSE**

16 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
17 Defendant alleges:

18 6. Plaintiff failed, in whole or in part, to exhaust his administrative remedies in a
19 timely manner and/or the grievance procedures applicable to the disputes alleged in
20 Plaintiff's Complaint.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
23 Defendant alleges:

24 7. Defendant's performance under the alleged contract, if any, was excused and
25 prevented within the meaning of Cal. Civ. Code Section 1511.

26 **EIGHTH AFFIRMATIVE DEFENSE**

27 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
28 Defendant alleges:

8. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

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3 **NINTH AFFIRMATIVE DEFENSE**

4 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
5 Defendant alleges:

6 9. Plaintiff's claims are barred, in whole or in part, by the doctrines of unclean
7 hands, waiver and/or estoppel.

8 **TENTH AFFIRMATIVE DEFENSE**

9 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
10 Defendant alleges:

11 10. Plaintiff's recovery, if any, of economic damages based upon the Complaint
12 and each purported cause of action therein must be offset by other income and benefits that
13 Plaintiff receives.

14 **ELEVENTH AFFIRMATIVE DEFENSE**

15 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
16 Defendant alleges:

17 11. Plaintiff's recovery, if any, of non-economic damages based upon the
18 Complaint and each purported cause of action alleged therein is limited to the percentage of
19 fault, if any, attributable to Defendant as provided in the Fair Responsibility Act of 1986,
20 California Civil Code Sections 1431-1431.5.

21 **TWELFTH AFFIRMATIVE DEFENSE**

22 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
23 Defendant alleges:

24 12. Defendant is not legally responsible for the acts and/or omissions of Blue
25 Cross Blue Shield, Metropolitan Life Insurance Company and/or any other insurance
26 company that purportedly insured Plaintiff.

27 **THIRTEENTH AFFIRMATIVE DEFENSE**

28 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
Defendant alleges:

1 13. To the extent Defendant is liable, if at all, for Plaintiff's claims, the fact and
2 extent of which Defendant expressly denies, Defendant may be entitled to indemnification,
3 contribution and/or equitable apportionment of such claims among all other parties
4 responsible for Plaintiff's claims.

5 **FOURTEENTH AFFIRMATIVE DEFENSE**

6 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
7 Defendant alleges:

8 14. Plaintiff's damages, the fact and extent of which are expressly denied, were
9 proximately caused by intervening, superseding and/or supervening acts or omissions for
10 which Defendant has no liability, or the acts or omissions of third parties.

11 **FIFTEENTH AFFIRMATIVE DEFENSE**

12 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
13 Defendant alleges:

14 15. Defendant exercised reasonable care to prevent and correct promptly any
15 alleged unlawful behavior and Plaintiff failed to take advantage of preventive and corrective
16 opportunities offered by Defendant and/or otherwise to avoid harm.

17 **SIXTEENTH AFFIRMATIVE DEFENSE**

18 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
19 Defendant alleges:

20 16. All of the alleged acts and conduct of Defendant of which Plaintiff complains
21 were privileged and/or justified.

22 **SEVENTEENTH AFFIRMATIVE DEFENSE**

23 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
24 Defendant alleges:

25 17. Any and all acts, occurrences and damages alleged or referred to in the
26 Complaint were proximately caused by the bad faith of Plaintiff in that Plaintiff failed to
27 deal fairly, honestly and reasonably with Defendant; therefore, the comparative bad faith of
28

1 Plaintiff reduces his right to recover, if any, by the amount which his bad faith contributed
2 to the damages alleged.

3 **EIGHTEENTH AFFIRMATIVE DEFENSE**

4 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
5 Defendant alleges:

6 18. Plaintiff has failed, and continues to fail, to take reasonable steps to mitigate
7 his damages.

8 **NINETEENTH AFFIRMATIVE DEFENSE**

9 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
10 Defendant alleges:

11 19. Defendant's actions were for a legitimate business purpose necessary for the
12 safe and efficient operation of the Plans.

13 **TWENTIETH AFFIRMATIVE DEFENSE**

14 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
15 Defendant alleges:

16 20. Plaintiff's claims are barred, in whole or in part, by the applicable Statute of
17 Limitations including, but not limited to, 29 U.S.C. Sections 1001, *et seq.*

18 **CLAIM FOR ATTORNEYS' FEES AND COSTS**

19 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

20 As and for an affirmative defense to Plaintiff's claim for attorneys' fees and costs,
21 Defendant alleges:

22 21. Plaintiff is not entitled to recover attorneys' fees and costs as demanded in
23 Plaintiff's Complaint based on his theories of recovery.

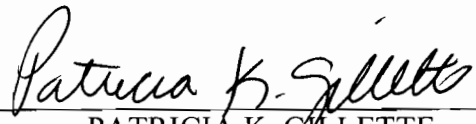
24 WHEREFORE Defendant prays:

- 25 1. That Plaintiff's Complaint be dismissed in its entirety;
26 2. That Plaintiff take nothing by his Complaint;
27 3. That Defendant be awarded attorneys' fees and its costs of suit; and
28

1 4. That Defendant be granted such other and further relief as this Court may
2 deem appropriate.

3 Dated: November 15, 2007

PATRICIA K. GILLETTE
ORRICK, HERRINGTON & SUTCLIFFE LLP

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6 _____
7 PATRICIA K. GILLETTE
8 Attorneys for Defendant
9 BANK OF AMERICA GROUP BENEFITS
10 PROGRAM

PROOF OF SERVICE BY MAIL

I am more than eighteen years old and not a party to this action. My business address is Orrick, Herrington & Sutcliffe LLP, The Orrick Building, 405 Howard Street, San Francisco, California 94105-2669. On November 15, 2007, I served the following document(s):

DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT FOR
DECLARATORY RELIEF


on the interested parties in this action by placing true and correct copies thereof in sealed envelope(s) addressed as follows:

Thornton Davidson
The ERISA Law Group
2055 San Joaquin Street
Fresno, CA 93721

I am employed in the county from which the mailing occurred. On the date indicated above, I placed the sealed envelope(s) for collection and mailing at this firm's office business address indicated above. I am readily familiar with this firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the firm's correspondence would be deposited with the United States Postal Service on this same date with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 15, 2007, at San Francisco, California.



Pamela R. Dawson